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21 *Attorneys for Defendants*

22 **UNITED STATES DISTRICT COURT**

23 **NORTHERN DISTRICT OF CALIFORNIA**

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19 ECOLOGICAL RIGHTS FOUNDATION,	)	
20 )	)	
21 Plaintiff,	)	Case Nos. 3:16-cv-06987-JD
22 v.	)	3:16-cv-07252-JD
23 FEDERAL EMERGENCY MANAGEMENT AGENCY,	)	3:17-cv-02788-JD
24 )	)	<b>STATUS REPORT AND PROPOSED ORDER CONTINUING STAY</b>
25 Defendant.	)	
26 )	)	
27 )	)	
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1 ECOLOGICAL RIGHTS )  
2 FOUNDATION, et al., )  
3 )

3 Plaintiffs, )  
4 )

4 v. )  
5 )

5 FEDERAL EMERGENCY )  
6 MANAGEMENT AGENCY, et al., )  
7 )

7 Defendants. )  
8 )

9 ECOLOGICAL RIGHTS )  
10 FOUNDATION, et al., )  
11 )

11 Plaintiffs, )  
12 )

12 v. )  
13 )

13 FEDERAL EMERGENCY )  
14 MANAGEMENT AGENCY, )  
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15 Defendant. )  
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17 As directed by the Court's June 6, 2019 Order, the parties submit this report on the status  
18 of the parties' settlement negotiations.

19 As outlined in the parties' Joint Stipulation for Stay, on May 15, 2019, the Court entered  
20 an Order in Case No. 17-CV-02788, granting the motion for summary judgment filed by  
21 Plaintiffs and denying the motion for summary judgment filed by the Federal Emergency  
22 Management Agency ("FEMA"). After the Court entered the Order, counsel for the parties  
23 began discussing the potential for settlement negotiations and, therefore, agreed to approach this  
24 Court to request a 90-day stay so that they could engage in a dialogue regarding settlement of all  
25 three of the cases pending before the Court. The Court granted the parties' request on June 6,  
26 2019. Since that time, the parties have exchanged multiple settlement proposals, communicated  
27 by email on a nearly weekly basis, and had approximately six conference calls. The parties are  
28 continuing to work to resolve issues regarding the framework of a potential agreement, as well as

1 the substantive terms, but have not yet finalized their work. Counsel for the parties believe that  
 2 time for additional discussions would be helpful to reaching a resolution. Furthermore, should  
 3 the parties reach an agreement in principle, Federal Defendants would need to obtain formal  
 4 approvals of any such settlement from both FEMA and the Assistant Attorney General for the  
 5 Department of Justice's Environment and Natural Resources Division. This aspect of the  
 6 process also will require additional time. Accordingly, the parties request that the Court extend  
 7 the stay for an additional 60 days, and direct the parties to file a status report no later than  
 8 November 5, 2019.

9 In addition, Plaintiffs' counsel provided Federal Defendants' counsel with a demand for  
 10 attorneys' fees on July 3, with subsequent communications about additional fees and costs on  
 11 August 21 and 26. Counsel for Federal Defendants are reviewing and analyzing that demand,  
 12 and hope to be in a position to respond to Plaintiffs soon. Thus, while the parties' primary focus  
 13 at this time is on substantive settlement terms, they are also working to address attorneys' fees  
 14 and costs. Accordingly, the parties request that, should they reach a substantive settlement, the  
 15 time for filing any motion regarding attorneys' fees and costs be extended to 60 days after filing  
 16 of any stipulation or other document indicating that the parties have reached a settlement.

17 Finally, as set forth in the parties' June 4 Stipulation, if the settlement discussions are not  
 18 productive, the parties agree that nothing precludes any party from filing a motion to lift the stay  
 19 sooner than the expiration of the 60-day stay and requesting that the Court enter a revised  
 20 briefing schedule for any motion for injunction. Absent the filing of such a motion, the parties  
 21 request that Plaintiffs' time for filing any motion for injunction as permitted by the Court's May  
 22 15, 2019 Order be extended to January 13, 2020, and that the deadline for FEMA's response be  
 23 extended to February 10, 2020.

24 Dated: September 6, 2019

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27

/s/ Alison C. Finnegan  
 28 ALISON C. FINNEGAN, Trial Attorney

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16 *Counsel for Plaintiffs*

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1                   **[PROPOSED] ORDER**

2                   The above-captioned cases are stayed for 60 days. The parties are directed to submit a  
3 status report to the Court no later than November 5, 2019.

4                   Should the parties reach a substantive settlement, any motion regarding attorneys' fees  
5 and costs shall be due 60 days after filing of any stipulation or other document indicating that the  
6 parties have reached a settlement.

7                   Should the parties be unable to reach a settlement, the deadline for Plaintiffs to file any  
8 motion for injunction as permitted by the Court's May 15, 2019 Order is January 13, 2020, and  
9 the deadline for FEMA's response is February 10, 2020.

10  
11 Dated: \_\_\_\_\_, 2019

12                   \_\_\_\_\_  
13                   Honorable James Donato  
14                   United States District Judge  
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1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on September 6, 2019, I electronically filed the foregoing with the  
3 Clerk of Court via the CM/ECF system, which will send notification of such to all attorneys of  
4 record.

5                   /s/       Alison C. Finnegan

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